

**Nursing and Midwifery Council
Fitness to Practise Committee**

**Substantive Order Review Hearing
Tuesday 18 January 2022**

Virtual Hearing

Name of registrant: **Mihaela Banea**

NMC PIN: 15K0030C

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing - November 2015

Area of registered address: Devon

Type of case: Misconduct/Lack of knowledge of English

Panel members: Sue Heads (Chair, Lay member)
Clare Taggart (Lay member)
Diane Gow (Registrant member)

Legal Assessor: Nigel Ingram

Hearings Coordinator: Margia Patwary

Nursing and Midwifery Council: Represented by Tracey Brown, Case Presenter

Mrs Banea: Not present and unrepresented

Order being reviewed: Suspension order (9 months)

Fitness to practise: Impaired

Outcome: **Striking off order to come into effect on 27
February 2022 in accordance with Article 30
(1)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Banea was not in attendance and that the Notice of Hearing had been sent to Mrs Banea's registered email address on 20 December 2021.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, dates and venue of the hearing and, amongst other things, information about Mrs Banea's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Ms Brown, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Banea has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mrs Banea

The panel next considered whether it should proceed in the absence of Mrs Banea. The panel had regard to Rule 21 and heard the submissions of Ms Brown who invited the panel to continue in the absence of Mrs Banea. She submitted that Mrs Banea had voluntarily absented herself.

Ms Brown referred the panel to the email dated on 17 January 2022 in regards to Ms Banea's attendance in which she replied:

'I'm so sorry, but I can't. Thanks'

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mrs Banea. In reaching this decision, the panel has considered the submissions of Ms Brown, and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs Banea;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mrs Banea.

If, once the panel has heard submissions from Ms Brown, the panel alters the interim order in this case, the matter will be listed for an early review in order that Mrs Banea can attend.

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Ms Brown made a request that parts of this case be held in private on the basis that proper exploration of Mrs Banea's case involves reference to her health matters. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard that matters involving Mrs Banea's health will be linked to this case, the panel decided that those parts of the hearing should be held in private in order to preserve the confidential nature of those matters.

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a striking off order.

This order will come into effect at the end of 27 February 2022 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the sixth review of a suspension order, originally imposed by a panel of the Conduct and Competence Committee on 28 April 2017 for nine months. The order was reviewed by a Fitness to Practice Committee panel on 1 February 2018 where the suspension order was extended for a further three months. Subsequently, a second reviewing panel of the Fitness to Practice Committee extended the order for a further 12 twelve months on 24 May 2018. On 03 May 2019 the suspension order was reviewed and extended for another 12 month period. On 21 April 2020 the order was reviewed and a further 12 month suspension order was imposed. The order was reviewed on 19 April 2021 and a further suspension of 9 months was imposed.

The current order is due to expire at the end of 27 February 2022.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved which resulted in the imposition of the substantive order were as follows:

'That you, a registered nurse:

- 1. Do not have the necessary knowledge of English to practice safely and effectively*

and/or

- 3. Failed to co-operate with NMC investigation in relation to your knowledge of English in that you did not comply with the NMC's direction to take a language assessment.*

And in light of the above, your fitness to practise is impaired by reason of your misconduct and / or your lack of knowledge of English.'

The fifth reviewing panel determined the following with regard to impairment:

'The panel considered whether your fitness to practise remains impaired. The panel in its decision took account of the NMC Guidance on registration language requirements.

The panel noted from your submissions today that you are still willing to do the OET. The panel acknowledged your difficulty in taking the OET last year due to the COVID-19 pandemic. It further noted that you said you are now practicing your English language through online lessons with a tutor. The panel was aware that the burden is upon you to show that you have the necessary standard of English to practice safely as a registered nurse.

The panel concluded that your fitness to practise remains impaired as you have not yet passed an NMC recognised language test or provided other evidence of proficiency in the English language.

The panel determined that you need to demonstrate you have fully remediated your practice by passing an OET or IELTS and therefore you remain impaired in relation to your misconduct.

The panel had borne in mind that its primary function was to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance.

For these reasons, the panel finds that your fitness to practise remains impaired and that such a finding is necessary both to protect the public and is also in the wider public interest, to uphold public confidence in the nursing profession.'

The fifth reviewing panel determined the following with regard to sanction:

'Having found your fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel then considered whether to impose a caution order but concluded that this too would be inappropriate. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered replacing the suspension order with a conditions of practice order. The panel determined that no conditions could be formulated that would address the concerns raised and which would adequately protect the public and the public interest considerations of this case.

The panel noted the length of time these proceedings have been on-going and the need for the expeditious disposal of this case. However, the panel was of the view that a further short suspension order would allow you the time suggested by your English Language tutor to make more progress with your learning and take the OET and successfully pass. The panel is of the view that a suspension order will ensure that the public remains protected and that public confidence in the profession will be maintained. Accordingly, the panel determined to impose a suspension order for the period of nine months.

The panel did seriously consider the imposition of a striking-off order but on this occasion took into account the evidence of your English Language tutor and the unusual circumstances of the pandemic. Therefore it decided to

afford you some further time to take the OET or IELTS successfully. The panel did note that all powers will be open to a future panel including a striking-off order.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 27 May 2021 in accordance with Article 30(1).

Before the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.'

The previous panel made the following recommendations:

- *Your attendance at the hearing;*
- *Any relevant testimonials from employment or voluntary activity as to your progress in English;*
- *A reflective piece using a recognised model demonstrating insight into your failings and the effect upon colleagues, the nursing profession and the public at large;*
- *Any documentary evidence of how you have kept your nursing practice up to date.*

Decision and reasons on current impairment

The panel has considered whether Mrs Banea's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all the documentation before it, including the NMC bundle. It has taken account of the submissions made by Ms Brown on behalf of the NMC. Ms Brown provided the panel with the background facts of the case and directed the panel to the relevant pages in the NMC bundles.

Ms Brown submitted that there has been no new evidence since the last review hearing and that Mrs Banea has not shown any progression in taken her Occupational English Test (OET) or the International English Language Testing System (IELTS) since 2016. There has been no evidence of remediation as Mrs Banea has also not provided the documents requested by the previous panel for today's hearing.

Ms Brown referred to the email from Mrs Banea which stated:

[PRIVATE]

Ms Brown submitted that Mrs Banea's fitness to practice is still impaired as none of the recommendations of the previous panel have been met. She has not used the last nine months to strengthen her practice nor remediated on the concerns raised. Ms Brown stated that the NMC had also offered to pay for the tests Mrs Banea needed to undertake. Despite the support provided she continues to fail to acknowledge the alleged concerns and there is therefore an ongoing risk of repetition. She submitted that it is a matter for the panel to decide on an appropriate order to impose on Mrs Banea's practice.

The panel heard and accepted the advice of the legal assessor.

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether Mrs Banea's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Mrs Banea had been making some progress towards undertaking her English test however at this hearing the panel has noted that there has been no evidence submitted of completing her OET or the IELTS since 2016 and that this has been an issue continuously for over 5 years. The panel noted that there has been no reflective piece or any progress which indicates Mrs Banea wishes to remediate the concerns raised on her practice. The panel also noted Mrs Banea has not sufficiently strengthened her practice as there have been no testimonials or reflections

given to the panel as evidence today suggests that she is making progress at all.
[PRIVATE].

Today's panel has not received any new information since the last hearing. In light of this, this panel decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that Mrs Banea's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Banea's fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mrs Banea's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mrs Banea's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered imposing a further suspension order. The panel noted that Mrs Banea has not shown remediation and has made only limited and unsustainable progress over the last five years. Further, Mrs Banea has not demonstrated any insight into her previous failings. She has failed to complete her OET or the IELTS. The panel was of the view that considerable evidence would be required to show that Mrs Banea no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent Mrs Banea from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

The panel noted that Mrs Banea had failed to meet the recommendations of five previous review panels to take the required English test and also to provide reflection and meet her obligations as required by the Code of Conduct. The panel considered that Mrs Banea's failure to comply over a number of years makes her fundamentally unsuitable to remain on the register. The panel considered no other sanction would address the concerns.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 27 February 2022 in accordance with Article 30(1).

This decision will be confirmed to Mrs Banea in writing.

That concludes this determination.